

ANNEXATION AND DEVELOPMENT AGREEMENT

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of October 13, 1998 by and between EMD Limited Liability Company, a Colorado limited liability company, PVRT NOTT I LLC, a Colorado limited liability company, PVRT NOTT II LLC, a Colorado limited liability company, and PVRT NOTT III LLC, a Colorado limited liability company (collectively, "Owner") and the TOWN OF AVON, a municipal corporation of the State of Colorado (the "Town").

RECITALS

A. Each entity comprising Owner is a limited liability company, duly organized and in good standing under the laws of the State of Colorado.

B. Owner owns certain real property located in unincorporated Eagle County, Colorado, more particularly described in Exhibit A attached to this Agreement (the "Property").

C. Owner desires to develop the Property as a mixed-use project known as The Village (at Avon) (the "Project") which would include, without limitation:

- (1) retail and other commercial uses;
- (2) single-family home sites;
- (3) multi-family development;
- (4) lodge and hotel uses;
- (5) recreational, cultural, educational and entertainment uses;
- (6) compliance with the Town's school dedication requirements;
- (7) provision for a trailhead to provide public access to United States Forest Service lands; and
- (8) open space.

D. Owner has submitted to the Town the "Annexation Petition," the "Zoning Application" and the "Sketch Plan Subdivision Application" (as such terms are defined in Section 1.1).

E. If the Property is annexed to the Town, the Town will have the authority to zone the Property and approve the subdivision of the Property in accordance with this Agreement, the "Comprehensive Plan", the "Development Plan" (as such terms are defined in Section 1.1), and the applicable Town requirements and policies; the Town will have the authority to govern development of the Project in accordance with the Municipal Code, this Agreement, the

Development Plan and other applicable Town requirements and policies; and the Town will receive certain tax revenues from the Property and the Project. Furthermore, the Town will have the authority to agree to provide for the orderly development of the Project, the vesting of certain property development rights concerning the Project, the development and maintenance of certain infrastructure improvements and public facilities relating to the Project, and the equitable sharing of tax revenues and costs relating to the Project and such infrastructure improvements and public facilities pursuant to this Agreement and the Development Plan.

F. Development of the Project will require large investments in infrastructure improvements and public facilities (which may include offsite improvements), including, without limitation, roads, drainage facilities, water lines, parks and recreation facilities which will serve the needs of the Project and the Town. Completion of these improvements and facilities will require substantial investments by Owner, the "Public Improvement Company" and the "Districts" (as such terms are defined in Section 1.1). Such investments can be supported only if there are assurances that the development of the Project, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement.

G. The Project may contribute substantially to the economic growth of the Town and, consequently, may increase tax revenues to the Town. The Town desires to annex the Property in order to provide for orderly growth in and around the Town. Owner and the Town desire to provide for a revenue-sharing mechanism.

H. The legislature of the State of Colorado adopted Sections 24-68-101, et seq. of the Colorado Revised Statutes (the "Vested Property Rights Statute") to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Property Rights Statute authorizes the Town to enter into development agreements with landowners providing for vesting of property development rights.

I. Consistent with the Vested Property Rights Statute, Chapter 17.14 of the Town's Municipal Code (the "Municipal Code") authorizes the Town to enter into development agreements with landowners and other qualified applicants providing for the vesting of property development rights.

J. Development of the Property in accordance with this Agreement will provide for orderly growth in accordance with the policy and goals set forth in the Town's Comprehensive Plan, ensure reasonable certainty, stability and fairness in the land use planning process, stimulate economic growth, secure the reasonable investment-backed expectations of Owner, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes for which the Vested Property Rights Statute and Chapter 17.14 of the Municipal Code were enacted. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, Owner desires to receive the assurance that it may proceed with development of the Property pursuant to the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the Town agree as follows:

ARTICLE 1

Definitions and General Provisions

1.1 Definitions. The following terms and references shall have the meanings indicated:

1.1.1 Accommodations/Lodging Fee: As defined in Section 4.5.

1.1.2 Annexation Petition: Collectively, two separate petitions for annexation, which in the aggregate cover the entire Property, filed with the Town on June 26, 1998.

1.1.3 Base Amount: As defined in Section 4.14.

1.1.4 CDOT: The Colorado Department of Transportation.

1.1.5 Chapel Place Exaction: As defined in Section 4.3.

1.1.6 Commercial Space: Areas of buildings occupied for purposes designated as "Commercial" for use purposes in the PUD Guide, but subject to the following: (a) the following types of facilities operated for public activities shall not constitute Commercial Space for purposes of calculating the total amount (in square feet) of commercial area permitted pursuant to the PUD Guide: (i) schools, and (ii) except to the extent such facilities exceed an aggregate of 200,000 square feet, unless the Town has consented to construction of such excess square footage: churches, skating arenas, cultural and community centers and facilities, and recreational centers and facilities; (b) in office and retail buildings, hallways, lobby and reception areas, stairwells, elevator areas, landings and entranceways, mechanical areas, public restrooms, permanently designated corridors, public lobbies, and common mall areas shall not constitute Commercial Space for purposes of calculating the total amount (in square feet) of commercial area permitted pursuant to the PUD Guide unless actually leased to an individual tenant; (c) in hotels, inns and motels, hallways, lobby and reception areas, stairwells, elevator areas, public restrooms, permanently designated corridors, landings, entranceways, meeting and banquet rooms and facilities, sundries shops, breakfast shops and other shops intended to cater primarily to hotel guests shall not constitute Commercial Space for purposes of calculating the total amount (in square feet) of commercial area permitted pursuant to the PUD Guide, but retail areas intended to cater primarily to non-hotel guests and full-service restaurants shall constitute Commercial Space for such purposes; (d) in any building, parking areas and structures shall not constitute Commercial Space for purposes of calculating the total amount (in square feet) of commercial area permitted pursuant to the PUD Guide. Measurements of the area (in square feet) of Commercial Space shall include the exterior building walls enclosing such Commercial

Space.

1.1.7 Comprehensive Plan: The Avon Comprehensive Plan adopted by the Planning and Zoning Commission of the Town on November 5, 1996.

1.1.8 Design Review Board: As defined in Section 4.13.

1.1.9 Development Plan: The PUD for the Property, as approved by the Town as the zoning for the Property, consisting of (a) the PUD Guide, and (b) the Sketch/PUD Development Plan indicating, among other things, planning areas, development sites, open space parcels and general road alignments for the development of the Project.

1.1.10 Districts: As defined in Section 4.4. The Traer Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, which is one of the Special Districts referred to in Section 4.4. All references to the term “Districts,” or to the phrase “one or more of the Districts,” shall be construed as a reference to the Traer Creek Metropolitan District.¹

1.1.11 Dwelling Units: As defined in the PUD Guide.

1.1.12 East Avon Exaction: As defined in Section 4.3.

1.1.13 East Beaver Creek Boulevard Improvements: As defined in Section 4.3.

1.1.14 Effective Date: The effective date of the Town Council ordinance or resolution approving this Agreement.

1.1.14(a) EMD: EMD Limited Liability Company, a Colorado limited liability company.²

1.1.15 Excludable Area: As defined in Section 4.8.

1.1.16 Exhibits: The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement:

Exhibit A - Legal Description of Property

Exhibit B - Police Services Methodology³

1.1.17 Final Approval: The 30th day following the effective date of the latest of the ordinances or resolutions by which Town Council approves (a) this Agreement, (b) the annexation of the Property to the Town, (c) the Development Plan as the zoning for the Property, (d) the Sketch Plan, and (e) the Service Plans, all as provided in Section 2.2. Final Approval shall be deemed not to have occurred if on or before such 30th-day either (i) any legal proceeding challenging any of such approvals is commenced, or (ii) any petition for a referendum seeking to

¹ 2001 1st Amendment.

² 2001 1st Amendment.

³ 2004 3rd Amendment.

reverse or nullify any of such approvals is duly filed; unless in the case of either (i) or (ii) above, Owner elects not to terminate this Agreement pursuant to Section 2.3, and such legal proceedings or referendums are concluded or resolved affirming such approvals within a period of time acceptable to Owner in its sole discretion.

1.1.18 Highway 6 Connector Road: As defined in Section 4.2.

1.1.19 Highway 6 Exaction: As defined in Section 4.3. As defined in Section 4.3(g).⁴

1.1.20 Interstate 70 Completion Date: As defined in Section 4.2.

1.1.21 Interstate 70 Improvements: Collectively, the Interstate 70 Interchange and the Highway 6 Connector Road.

1.1.22 Interstate 70 Interchange: As defined in Section 4.2.

1.1.23 Municipal Code: The Town's Municipal Code, as in effect from time to time.

1.1.24 Municipal Services: As defined in Section 4.9.

1.1.25 Municipal Services Invoice: As defined in Section 4.10.

1.1.26 Owner: Collectively, EMD Limited Liability Company, a Colorado limited liability company, PVRT NOTT I LLC, a Colorado limited liability company, PVRT NOTT II LLC, a Colorado limited liability company, and PVRT NOTT III LLC, a Colorado limited liability company, and their respective successors and assigns.⁵

1.1.26 Owner: Collectively, EMD, Traer and their respective successors and assigns. With respect to those obligations of Owner which the District has expressly undertaken and assumed pursuant to Sections 4.4 and 6.9, references to the term "Owner" shall be construed to be references to the District only, and not as references to EMD and/or Traer.⁶

1.1.26 (a) Phase 1 Improvements: As defined in Section 4.3(b)(i).⁷

1.1.26(b) Phase 2 Improvements: As defined in Section 4.3(b)(ii).⁸

1.1.26(c) Phase 3 Improvements: As defined in Section 4.3(b)(iii).⁹

1.1.26(d) Phase 4 Improvements: As defined in Section 4.3(b)(iv).¹⁰

⁴ 2003 2nd Amendment.

⁵ 2001 1st Amendment.

⁶ 2001 1st Amendment.

⁷ 2001 1st Amendment.

⁸ 2001 1st Amendment.

⁹ 2001 1st Amendment.

1.1.27 Planning Areas: The portions of the Property described as such in the Development Plan.

1.1.27(a) Police Services Methodology: The agreed upon methodology for calculation of the Town's annual cost of providing police services to the Project, as generally described in Section 4.5(a) and specifically set forth in the spreadsheet entitled *Calculation of Police Services Village (at Avon) 2005 Projected Budgeted Revenues*, a copy of which is attached as Exhibit B of this Agreement, and which shall apply to the calculation of the police services component for the period commencing July 1, 2004, and continuing through the term of this Agreement.¹¹

1.1.28 Project: The mixed-use PUD project proposed to be developed on the Property generally described in Recital C and more particularly described in the Development Plan.

1.1.29 Project Ad Valorem Property Taxes: As defined in Section 4.6.

1.1.30 Project Fees: Collectively, the Real Estate Transfer Fee, the Retail Sales Fee, and the Accommodations/Lodging Fee.

1.1.31 Property: The real property described on Exhibit A attached to this Agreement.

1.1.32 Public Improvement Company: As defined in Section 4.4. Public Improvement Companies: As defined in Section 4.4.¹²

1.1.33 Public Works Dedication: As defined in Section 4.3.

1.1.34 PUD: Planned unit development or PUD, as such terms are defined and used in the Municipal Code.

1.1.34(a) PUD Development Plan Administrative Amendment No. 1: As approved by the Town on May 21, 2001, the development plan for the Project which amends in its entirety the Sketch/PUD Development Plan.¹³

1.1.35 PUD Guide: The document approved by the Town that establishes land use and development regulations for all of the Property and each of the Planning Areas within the Property.

1.1.36 Real Estate Transfer Fee: As defined in Section 4.5.

¹⁰ 2001 1st Amendment.

¹¹ 2004 3rd Amendment.

¹² 2001 1st Amendment.

¹³ 2001 1st Amendment.

1.1.37 Required Municipal Services Payment: As defined in Section 4.10.

1.1.38 Retail Sales Fee: As defined in Section 4.5.

1.1.39 Sanitation District: The Eagle River Water & Sanitation District.

1.1.40 School Site Dedication: As defined in Section 4.3.

1.1.41 Sketch Plan: The subdivision Sketch Plan (as defined Section 16.08.140 of the Municipal Code) for the Property as approved by the Town.

1.1.42 Sketch Plan Subdivision Application: The sketch plan subdivision application for the Property submitted to the Town on July 10, 1998, as amended, as approved by the Town.

1.1.43 Sketch/PUD Development Plan: The Village (at Avon) PUD Development/Sketch Plan for the Project, prepared by Peter Jamar Associates, Inc., and submitted to the Town on July 10, 1998, as amended, as approved by the Town. Sketch/PUD Development Plan: The Village (at Avon) PUD Development/Sketch Plan for the Project, prepared by Peter Jamar Associates, Inc., and submitted to the Town on July 10, 1998, as approved by the Town and as amended in its entirety by the PUD Development Plan Administrative Amendment No. 1 and any approved future amendments thereto. Unless the context clearly indicates otherwise, all references to the term "Sketch/PUD Development Plan" shall be construed as a reference to the PUD Development Plan Administrative Amendment No. 1 and any approved future amendments thereto.¹⁴

1.1.43(a) Special Districts: Traer Creek Metropolitan District and The Village Metropolitan District.¹⁵

1.1.44 Swift Gulch Road Improvements: As defined in Section 4.3.

1.1.45 Town: The Town of Avon, a municipal corporation of the State of Colorado.

1.1.46 Town Ad Valorem Property Taxes: The total ad valorem property taxes imposed from time to time by the Town on all real property within the Project, less the ad valorem property taxes imposed to pay debt service on debt of the Town outstanding as of the date of this Agreement, including any debt incurred to refund such debt, provided that such new debt shall (a) bear interest at a rate no higher than the interest rate applicable to such refunded debt and (b) otherwise be on economic terms no worse to the Town than the economic terms of such refunded debt.

1.1.47 Town Ad Valorem Property Tax Revenue: Revenue received or scheduled to be received by the Town from the payment of Town Ad Valorem Property Taxes, net of actual

¹⁴ 2001 1st Amendment.

¹⁵ 2001 1st Amendment.

amounts remitted to Eagle County for collecting such Town Ad Valorem Property Taxes.

1.1.48 Town Council: The Town Council of the Town.

1.1.48(a) Traer: Traer Creek LLC, a Colorado limited liability company.¹⁶

1.1.49 Vested Property Rights Statute: As defined in Recital H.

1.1.50. Zoning Application: The zoning application for the Property submitted to the Town on July 10, 1998.

1.2 Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided in Section 1.4.

1.3 Term. In recognition of the size of the development contemplated under this Agreement and the Development Plan, the substantial investment and time required to complete the development of the Project, the potential for phased development of the Project, and the possible impact of economic cycles and varying market conditions during the course of development, Owner and the Town agree that the term of this Agreement and the vested property rights established under this Agreement shall commence on the Effective Date and shall continue until the 35th anniversary of the Effective Date. References to the term of this Agreement and the vesting of property rights in the preceding sentence shall not be deemed to limit or otherwise affect the rights of the Town described in Section 4.7 to initiate or pursue dissolution of any District as set forth in such Section 4.7. After the expiration of the term, this Agreement shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not effect (a) the annexation of the Property to the Town; (b) any common-law vested rights obtained prior to such termination, or (c) any right arising from Town permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Development Plan.

1.4 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and Owner following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, "Owner" shall mean only the signatories to this Agreement constituting Owner and those parties, if any, to whom such signatories have specifically granted, in writing, the power to enter into such amendment.

1.5 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement or the Development Plan, Owner and the Town agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the Town and Owner otherwise agree, each party shall select and pay its own legal counsel to represent it

¹⁶ 2001 1st Amendment.

in connection with such action or proceeding.

ARTICLE 2 Annexation of the Property

2.1 Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (C.R.S. §§ 31-12-101, et seq.).

2.2 Conditions Precedent. Annexation of the Property to the Town shall not be effective until the following conditions have been satisfied: (a) Owner and the Town have mutually executed and delivered this Agreement; (b) the Town and Owner have agreed to the form and substance of the Development Plan, the Sketch Plan and the Service Plans, and the Town has approved such items in the agreed-upon form and substance (and pursuant to Colorado Revised Statutes Section 32-1-204.5 in the case of the Service Plans); and (c) Final Approval has occurred.

2.3 Failure of Conditions. Until all of the conditions set forth in Section 2.2 have been satisfied, this document shall constitute an offer by Owner and the Town to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document) and the annexation of the Property to the Town shall not be effective. Consequently, at any time before such conditions are satisfied, Owner may withdraw the Annexation Petition and Owner or the Town may withdraw its offer to enter into this Agreement. If Owner withdraws the Annexation Petition, either party withdraws its offer to enter into this Agreement, or if Final Approval does not occur, then this Agreement shall be deemed void and of no force or effect, the Property shall be deemed not annexed to the Town, and the vested property rights described in this Agreement shall be deemed not established.

ARTICLE 3 Zoning and Vested Rights

3.1 PUD Zoning. Upon annexation of the Property, the entire Property shall be zoned as a PUD as provided in this Agreement and in the Development Plan.

3.2 Permitted Uses/Design Standards. The permitted uses of the Property, the density and intensity of use (including, without limitation, 650,000 square feet of Commercial Space and 2,400 Dwelling Units, including 500 affordable housing units, all as more specifically described in the PUD Guide), the maximum height, bulk and size of proposed buildings, Project design standards, provisions for reservation or dedication of land for public purposes, the general location of roads and trails, the ability of Owner to relocate roads, trails and improvements, and other terms and conditions of development applicable to the Property and the Project shall be those set forth in this Agreement and the Development Plan, as amended from time to time in accordance with Section 1.4.

3.3 Vesting of Property Rights. Owner and the Town agree that (a) this Agreement, the Development Plan and the Sketch Plan constitute an approved “site-specific development plan” as defined in the Vested Property Rights Statute and Section 17.14.100 of the Municipal Code, and (b) that the owners of the Property shall have vested property rights to undertake and complete development and use of the Property and the Project as provided in this Agreement, the Development Plan and the Sketch Plan. Pursuant to Section 17.14.050 of the Municipal Code:

Approval of this plan constitutes a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.

3.4 Property Rights Vested. The rights identified below shall constitute the vested property rights under this Agreement:

(a) The right to develop, plan and engage in land uses within the Property and the Project in the manner and to the extent set forth in and pursuant to this Agreement, the Development Plan and the Sketch Plan.

(b) The right to develop, plan and engage in land uses within the Property and the Project in accordance with the densities, physical development standards and other physical parameters set forth in the Development Plan.

(c) The right to develop the Project in the order, at the rate and at the time as market conditions dictate, subject to the terms and conditions of this Agreement and the Development Plan.

(d) The right to develop and complete the development of the Project (including, without limitation, the right to receive all Town approvals necessary for the development of the Project) with conditions, standards and dedications which are no more onerous than those imposed by the Town upon other developers in the Town on a uniform, non-discriminatory and consistent basis, and subject only to the exactions and requirements set forth in this Agreement and the PUD Guide; provided that such conditions, standards and dedications shall not directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Owner's rights set forth in this Agreement or the Development Plan.

(e) The Town shall not initiate any zoning, land use or other legal or administrative action that would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Owner's rights set forth in this Agreement or the Development Plan.

3.5 No Obligation to Develop. Owner shall have no obligation to develop all or any portion of the Project and shall have no liability to the Town or any other party for its failure to develop all or any part of the Project. Owner and the Town contemplate that the Project will be developed in phases. Owner shall have no obligation to develop all or any portion of any such

phase, notwithstanding the development or non-development of any other phase, and Owner shall have no liability to the Town or any other party for its failure to develop all or any portion of any such phase of the Project.

3.6 Compliance with General Regulations. Except as otherwise provided in this Agreement or the Development Plan, the establishment of vested property rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of Town regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes, the Municipal Code, and other Town rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the date of this Agreement or may be enacted or amended after the date of this Agreement, provided that such newly enacted or amended Town regulations shall not directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of Owner's rights set forth in this Agreement or the Development Plan. Owner does not waive its right to oppose the enactment or amendment of any such regulations.

ARTICLE 4

Public Facilities; Revenue Sharing

4.1 Access; Roads. Access, ingress and egress to, from and within the Project shall be provided as generally described in the Development Plan. Owner contemplates that one or more of the Districts shall construct the roads within the Project in accordance with standards set forth in the PUD Guide and dedicate such roads to the Town, whereupon the Town shall accept such roads for dedication in their then current condition and shall assume maintenance of such roads. Nothing set forth in the preceding sentence shall prohibit or limit Owner's right to construct or maintain private roads on any portion of the Property.

4.2 I-70 Interchange. Owner shall diligently pursue obtaining the necessary permits to facilitate the establishment and construction of a full diamond interchange on Interstate 70 (the "Interstate 70 Interchange") serving the proposed road that will cross Interstate 70, as such road is depicted in the Sketch/PUD Development Plan. The Town will cooperate (without any obligation to incur any out-of-pocket expenses to third parties that are not reimbursed by Owner) with Owner to cause or facilitate the establishment and construction of the Interstate 70 Interchange. Owner shall deliver to the Town quarterly reports of the status of the permitting process. Owner shall be permitted to complete construction of up to forty percent (40%) of the Dwelling Units and forty percent (40%) of the Commercial Space permitted under the Development Plan prior to completing construction of the Interstate 70 Interchange and the road designed to connect such Interstate 70 Interchange to Highway 6 as depicted in the Sketch/PUD Development Plan (the "Highway 6 Connector Road"), which Highway 6 Connector Road shall include, subject to obtaining all required permits and approvals, a roundabout at the intersection of Highway 6 and such Highway 6 Connector Road, provided that such Interstate 70 Improvements are completed within four (4) years after the date (the "Interstate 70 Completion Date") that is the earlier to occur of: (a) the date the Town issues the first building permit for construction within the Project, or (b) the date that is six (6) months after the date of Final

Approval. If either (i) Owner completes construction of forty percent (40%) or more of either the Dwelling Units or Commercial Space, as the case may be, permitted under the Development Plan prior to the completion of construction of the Interstate 70 Improvements, or (ii) construction of the Interstate 70 Improvements has not been completed on or prior to the Interstate 70 Completion Date, the Town shall have no obligation to issue building permits for additional Dwelling Units or Commercial Space, as the case may be, until construction of the Interstate 70 Improvements is completed. If (A) construction of any Dwelling Units or Commercial Space has been commenced but has not been completed on the Interstate 70 Completion Date, and (B) the Interstate 70 Improvements have not been completed by such Interstate 70 Completion Date, then, upon receiving written notice from the Town, Owner shall cease construction of such Dwelling Units or Commercial Space, as the case may be. Notwithstanding the foregoing, upon written request of Owner, the Town may consent to issue building permits in excess of the restrictions set forth above and permit construction on projects in progress to continue past the Interstate 70 Completion Date, which consent shall not be unreasonably withheld or delayed. At or prior to the time that CDOT so requires, the applicable District shall provide to CDOT security in the form of a completion bond or in such other form acceptable to CDOT to ensure that adequate funds are available for completion of the Interstate 70 Interchange.¹⁷

4.2 I-70 Improvements and Development Limitations. The District shall diligently pursue obtaining the necessary permits to facilitate the establishment and construction of the Interstate 70 Improvements, consisting of (i) a full diamond interchange on Interstate 70 (the “Interstate 70 Interchange”) serving the proposed road that will cross Interstate 70, as such road is depicted in the PUD Development Plan Administrative Amendment No. 1, and (ii) a road designed, in accordance with the road standards set forth in Section I.5 of the PUD Guide, to connect the Interstate 70 Interchange to Highway 6 as depicted in the PUD Development Plan Administrative Amendment No. 1 (the “Highway 6 Connector Road”, which Highway 6 Connector Road shall include, subject to obtaining all required permits and approvals, a roundabout at the intersection of Highway 6 and such Highway 6 Connector Road. The Town will cooperate (without any obligation to incur any out-of-pocket expenses to third parties that are not reimbursed by the District) with the District to cause completion of construction of the Interstate 70 Improvements by a target date of June 15, 2003 (the “Interstate 70 Completion Date”). At or prior to the time that CDOT so requires, the District shall provide to CDOT security in the form of a completion bond or in such other form acceptable to CDOT to ensure that adequate funds are available for completion of the Interstate 70 Interchange. The District shall deliver to the Town quarterly reports of the status of the permitting process. Development within the Property prior to completion of the Interstate 70 Improvements shall be subject to the following provisions:¹⁸

(a) Prior to the District completing construction of the Interstate 70 Improvements, Owner shall be entitled to apply for and receive from the Town building permits and certificates of occupancy for forty percent (40%) of the Dwelling Units permitted under the Development Plan and three hundred fifteen thousand (315,000) square feet of Commercial Space. If the Interstate 70 Improvements are not completed by the Interstate 70 Completion Date, then the Town shall have no obligation to issue building permits for development in excess of the

¹⁷ 2001 1st Amendment.

¹⁸ 2001 1st Amendment.

foregoing numbers after the Interstate 70 Completion Date until the Interstate 70 Improvements have been completed. However, if the Town issues a building permit which, upon completion of construction, will result in more than two hundred sixty thousand (260,000) square feet of constructed Commercial Space, cumulatively, within the Property, then the District shall have commenced construction of the Interstate 70 Interchange prior to the Town being obligated to issue any certificate of occupancy which will result in the occupancy of more than two hundred sixty thousand (260,000) square feet of constructed Commercial Space, cumulatively, within the Property.¹⁹

(b) Except as described in subparagraph (a) of this Section 4.2, the Town shall have no obligation to issue building permits or certificates of occupancy for Dwelling Units or Commercial Space until construction of the Interstate 70 Improvements is completed. If (A) construction of any Dwelling Units or Commercial Space other than that described in subparagraph (a) of this Section 4.2 has been commenced but has not been completed on the Interstate 70 Completion Date, and (B) the Interstate 70 Improvements have not been completed by such Interstate 70 Completion Date, then, upon receiving written notice from the Town, the Owner shall cease construction of such Dwelling Units or Commercial Space, as the case may be. Notwithstanding the foregoing, upon written request of Owner, the Town may consent to issue building permits in excess of the restrictions set forth above and permit construction on projects in progress to continue to completion, and issue certificates of occupancy, past the Interstate 70 Completion Date, which consent shall not be unreasonably withheld or delayed.²⁰

4.3 Exactions and Fees.

(a) One or both Districts shall remit to the Town:

(i) an aggregate of \$2,000,000.00 in payment of the Project's proportionate share of the costs to be incurred by the Town for development and construction of the improvements described as part of the "Recommended Capital Improvements Program" set forth in the "East Avon Commercial Center – Access and Circulation Plan" draft for Public Workshop #3 - September 17, 1998, prepared by Charlier Associates, Inc., in ten (10) equal annual installments of \$200,000.00 each, commencing on September 1, 1999, or, if sooner, thirty (30) days after the date a District issues bonds to pay for construction of infrastructure improvements for the Project, and continuing on each anniversary thereof for nine (9) years (the "East Avon Exaction"), and the Town acknowledges and agrees that fifty percent (50%) of such installment payments of the East Avon Exaction shall be used exclusively for the foregoing purposes; and

(ii) provided that Final Approval has occurred, within sixty (60) days after the Districts have received written notice from the Town that the Town has made the payment described below in this clause (ii) fifty percent (50%) of any amount that the Town has remitted to the developer of the project within the Town known as "Chapel Square" as a contribution toward the costs of constructing the road known as Chapel Place, provided, however, that under no circumstance shall the liability of the Districts

¹⁹ 2001 1st Amendment.

²⁰ 2001 1st Amendment.

under this clause (ii) exceed \$100,000.00 (the "Chapel Place Exaction").

(b) Subject to timely obtaining the necessary rights-of-way and permits, one or both Districts shall cause East Beaver Creek Boulevard to be connected to the western boundary of the Property as a two-lane roadway with a third auxiliary lane at intersections and access points (the "East Beaver Creek Boulevard Improvements"), provided, however, that such East Beaver Creek Boulevard Improvements shall not be required to be commenced until the date that the initial installment of the East Avon Exaction becomes due pursuant to subsection 4.3(a)(i) above. The Town will timely obtain and make available to the Districts all property and rights-of-way required for the East Beaver Creek Boulevard Improvements and the out-of-pocket costs incurred by the Town in purchasing or otherwise obtaining such property and rights-of-way shall be paid by the applicable District.²¹

(b) Subject to timely obtaining the necessary rights-of-way and permits, the District shall cause East Beaver Creek Boulevard to be connected to the western boundary of the Property and extended through the Property to the Highway 6 Connector Road (the "East Beaver Creek Boulevard Improvements"). The Town will timely obtain and make available to the District all property and rights-of-way required for the East Beaver Creek Boulevard Improvements and the out-of-pocket costs incurred by the Town in purchasing or otherwise obtaining such property and rights-of-way shall be reimbursed by the District. Construction of the East Beaver Creek Boulevard Improvements shall occur in phases, as set forth below:²²

(i) Phase 1 of the East Beaver Creek Boulevard Improvements (the "Phase 1 Improvements") shall consist of the construction of a temporary, non-public extension of an all-weather surface (dust free) service road (portions of the paved surface of the abandoned airport runway may be used) from the western boundary of the Property to the Highway 6 Connector Road. Such extension shall be used for construction traffic only, which construction traffic on the non-public service road shall not be subject to the Town's ordinances pertaining to vehicular weight restrictions. Construction traffic shall be subject to the Town's ordinances pertaining to vehicular weight restrictions upon issuance of the first certificate of occupancy (temporary or final) issued for an improvement within Planning Areas K or L. Subject to the Town's timely issuance of the requisite permits, the District shall employ commercially reasonable efforts to cause completion of the Phase 1 Improvements prior to commencement of any vertical construction within Planning Area K or Planning Area L.²³

(ii.) Phase 2 of the East Beaver Creek Boulevard Improvements (the "Phase 2 Improvements") shall consist of (A) converting the Phase 1 Improvements to a two (2) lane paved temporary surface, and (B) a two (2) lane paved temporary surface connecting Chapel Place to the Phase 1 Improvements. Subject to the Town's timely issuance of the requisite permits, the District shall

²¹ 2001 1st Amendment.

²² 2001 1st Amendment.

²³ 2001 1st Amendment.

complete the Phase 2 Improvements by not later than the date on which the Town issues the first certificate of occupancy for Commercial Space within Planning Area K or Planning Area L.²⁴

(iii) Phase 3 of the East Beaver Creek Boulevard Improvements (the "Phase 3 Improvements") shall consist of the following improvements to the segment of East Beaver Creek Boulevard between the western terminus of Beaver Creek Place and the western boundary of The Village (at Avon): (A) construction of a two-lane roadway with a third auxiliary lane at intersections and access points; (B) streetscape improvements to the segment between the western terminus and the eastern terminus of Beaver Creek Place, which improvements shall be in general conformance with the East Beaver Creek Boulevard Streetscape Improvement Plans dated April 2000, prepared by Inter-Mountain Engineering, W. for the Town of Avon; and (C) streetscape improvements to the segment between the eastern terminus of Beaver Creek Place and the western boundary of The Village (at Avon), which improvements shall be in general conformance with the streetscape improvements within Planning Area A. Subject to the Town's timely issuance of the requisite permits, the District shall commence the Phase 3 Improvements by April 15, 2005, and shall employ commercially reasonable efforts to cause completion of the Phase 3 Improvements on or before December 31, 2005; provided, however, that in the event of an earlier re-subdivision of any area within Planning Areas A through F, inclusive, within The Village (at Avon) Filing No. 1, the District shall continue the Phase 3 Improvements by April 15, and shall employ commercially reasonable efforts to cause completion thereof by December 31, of the year immediately following the recordation of any final subdivision plat which re-subdivides any such area.²⁵

(iii) Phase 3 of the East Beaver Creek Boulevard Improvements (the "Phase 3 Improvements") shall consist of the following improvements to the segment of East Beaver Creek Boulevard between the western terminus of Beaver Creek Place and the western boundary of The Village (at Avon): (A) construction of a two-lane roadway with a third auxiliary lane at intersections and access points; (B) streetscape improvements to the segment between the western terminus and the eastern terminus of Beaver Creek Place, which improvements shall be in general conformance with the East Beaver Creek Boulevard Streetscape Improvement Plans dated April 2000, prepared by Inter-Mountain Engineering, Ltd. for the Town of Avon; and (C) streetscape improvements to the segment between the eastern terminus of Beaver Creek Place and the western boundary of The Village (at Avon), which improvements shall be in general conformance with the streetscape improvements within Planning Area A. Subject to the Town's timely issuance of the requisite permits, the District shall commence the Phase 3 Improvements by April 15, 2009, and shall employ commercially reasonable efforts to cause completion of the Phase 3 Improvements on or before December 31, 2009; provided, however, that in the event of an earlier re-

²⁴ 2001 1st Amendment.

²⁵ 2001 1st Amendment and 2004 3rd Amendment.

subdivision of any area within Planning Areas A through F, inclusive, as depicted in The Village (at Avon) PUD Development Plan Administrative Amendment No. 1, dated May 21, 2001, and recorded in the Office of the Eagle County Clerk and Recorder on July 31, 2001, at Reception No. 763439, the District shall commence the Phase 3 Improvements by April 15, and shall employ commercially reasonable efforts to cause completion thereof by December 31, of the year immediately following the recordation of any final subdivision plat which re-subdivides any such area.²⁶

(iv) Phase 4 of the East Beaver Creek Boulevard Improvements (the "Phase 4 Improvements") shall consist of converting the Phase 2 Improvements from temporary to permanent by the construction of (A) a permanent extension from the east terminus of Beaver Creek Plane to the Highway 6 Connector Road in accordance with the road standards set forth in Section I.5 of the PUD Guide, and (B) final design and construction of a connection to Chapel Place. The District shall cause the Phase 4 Improvements to be commenced and completed in accordance with the subdivision process involving Planning Areas A through J, inclusive.²⁷

(iv) Phase 4 of the East Beaver Creek Boulevard Improvements (the "Phase 4 Improvements") shall consist of converting the Phase 2 Improvements from temporary to permanent by the construction of (A) a permanent extension from the east terminus of Beaver Creek Place to the Highway 6 Connector Road in accordance with the road standards set forth in Section I.5 of the PUD Guide, and (B) final design and construction of a connection to Chapel Place. The District shall cause the Phase 4 Improvements to be commenced and completed in accordance with the subdivision process involving Planning Areas A through F and H through J, as depicted in The Village (at Avon) PUD Development Plan Administrative Amendment No. 1, dated May 21, 2001, and recorded in the Office of the Eagle County Clerk and Recorder on July 31, 2001, at Reception No. 763439.²⁸

(c) Subject to all necessary permits and approvals having been issued for the following described roadway improvements, which permits and approvals Owner or one or both Districts shall diligently pursue, in conjunction with the initial phase of commercial and/or residential construction in that portion of the Project located south of Interstate 70, the applicable District shall install roadway improvements (the "Swift Gulch Road Improvements") that shall extend easterly from the point where Swift Gulch Road terminates in Planning Area RMF-2 to the road designed to pass under Interstate 70 and serve Planning Areas I\M -1, RMF-3 and Residential Lot 1 and Lou 6-96. Such Swift Gulch Road Improvements initially shall constitute a one-lane gravel or paved road to be used solely for construction traffic generated by the Project and emergency access only. After the Interstate 70 Improvements have been substantially completed, the Town Council may by written notice to Owner and the Districts, designate that

²⁶ 2004 3rd Amendment.

²⁷ 2001 1st Amendment.

²⁸ 2004 3rd Amendment.

the Swift Gulch Road Improvements shall in the future be either: (i) utilized solely as an emergency access connection, in which case, such Swift Gulch Road Improvements shall be: (A) no less than twelve (12) feet wide, (B) paved with asphalt, (C) constructed with grades not exceeding ten percent (10%), (D) accessible only by non-motorized uses (i.e. hiking, bicycling, horseback riding), except for emergency vehicle access through "breakaway" gates to be installed at or near the easterly boundary of Planning Area RMF-2 and at or near Planning Area N, and (E) maintained by the applicable District, which maintenance shall include snowplowing, or (ii) a two-lane paved general circulation road, in which case the Swift Gulch Road Improvements shall be constructed, within one (1) year after receipt of such written notice from the Town Council, with grades not exceeding ten percent (10%), and otherwise in accordance with the road standards set forth in the PUD Guide.²⁹

(c) Subject to all necessary permits and approvals having been issued for the following described roadway improvements, which permits and approvals the District shall diligently pursue, the District shall construct a two-lane paved general circulation road with grades not exceeding ten percent (10%) and otherwise in accordance with the road standards set forth in Section I-5 of the PUD Guide, which road shall extend easterly from the point where Swift Gulch Road terminates in Planning Area RMF-2 to the road designed to pass under Interstate 70 and serve Planning Areas RMF-1, RMF-3 and Residential Lot 1 and Lots 6-96 (the 'Swift Gulch Road Improvements'). The Swift Gulch Road Improvements shall be completed at the time of completion of the Interstate 70 Improvements, and shall include six foot (6') wide paved shoulders on both sides, or, in lieu thereof, if mutually agreed upon by the District and the Town, a ten foot (10') wide paved bike / pedestrian path on one side of the road, which shall be separated from the roadway. Within sixty (60) days after receipt of an itemized statement and supporting documentation for such costs, the Town shall reimburse the District for the full cost of paving the six foot wide shoulders, based on the unit cost of asphalt paving for the Swift Gulch Road Improvements.³⁰

(d) When required for actual use by the Town, or earlier if determined by Owner or the applicable District, Owner or the Districts shall convey to the Town one or more parcels of land south of Interstate 70 (up to a maximum of three (3) parcels, the actual number of which shall be designated by the Town within ninety (90) days after request from Owner or the applicable District to do so) aggregating approximately four (4) buildable acres, provided that no such parcel shall be larger than two (2) buildable acres, the locations, of which shall be designated by Owner or the applicable District, to be used exclusively for the Town's construction and operation of a public works facility and fire station (collectively, the "Public Works Dedication"). Such construction and operation shall comply with the terms of the Development Plan and architectural standards and design guidelines established by the Design Review Board. .At least ninety (90) days prior to commencing construction of any improvements on any such site or sites, the Town shall deliver to the Design Review Board copies of plans for such improvements. Owner or any District may at its sole option and at its sole expense, upgrade all or any portion of the exteriors of such improvements.³¹

²⁹ 2001 1st Amendment.

³⁰ 2001 1st Amendment.

³¹ 2001 1st Amendment.

(d) Within thirty (30) days after the Town's issuance of the first certificate of occupancy (temporary or final) for any improvement within Planning Areas K or L, Owner shall convey to the Town a parcel of land which is described as "Lot 5, The Village (at Avon) Filing 1" in the final plan submittal package which Owner submitted to the Town on June 29, 2001. Upon Owner's determination of the location and subsequent to the recordation of a final plat for the relevant Planning Area, Owner shall convey to the Eagle River Fire Protection District a parcel of land to be used exclusively for construction and operation of a fire protection facility, which shall consist of approximately one buildable acre in a location designated by Owner, and which may be located within Planning Area N or an "OS" or "P" Planning Area. The foregoing dedications constitute, collectively, the "Public Works Dedication." Construction and operation of the public works facility and the fire protection facility shall comply with the terms of the Development Plan and architectural standards and design guidelines established by the Design Review Board. In compliance with any such design guidelines, but at least ninety (90) days prior to commencing construction of any improvements on any such site or sites, the Town or the Eagle River Fire Protection District, as applicable, shall deliver to the Design Review Board copies of plans for such improvements. Owner or the District may at its sole option and at its sole expense, upgrade all or any portion of the exteriors of such improvements.³²

(e) Owner shall remit to the Town, within thirty (30) days after Final Approval has occurred, an amount sufficient to reimburse or pay the Town for all third-party consultant fees and expenses actually incurred by the Town in reviewing, analyzing and approving annexation of the Property to the Town and satisfying all conditions set forth in Section 2.2 through and including the date of Final Approval, including, without limitation, legal, accounting, engineering and other consulting fees and expenses and all application, processing and other fees charged by the Town in connection with considering and approving all matters contemplated in this Agreement through and including the date of Final Approval, provided, however, that under no circumstances shall the liability of Owner under this subsection (e) exceed \$50,000.00 in the aggregate. The Town shall deliver to Owner a statement itemizing all of the foregoing fees, expenses and charges in reasonable detail.

(f) As and when required, Owner shall make any conveyance of land or cash in lieu thereof in compliance with the Town's school site dedication requirements in effect as of the date of this Agreement (the "School Site Dedication"); provided, however, that notwithstanding anything to the contrary set forth in the Municipal Code or any other statute, ordinance, regulation or the like, any conveyance of land made in whole or partial satisfaction of the School Site Dedication shall be used exclusively for school, outdoor recreation, parks or open space purposes and for no other use or purpose (including municipal purposes) without the Town having first obtained Owner's written consent, which consent may be given or withheld in Owner's sole discretion. Any such use shall comply with the terms of the Development Plan and shall be subject to review by the Design Review Board.

(g) Subject to all required rights-of-way, permits, and approvals having been obtained, one or both Districts shall cooperate with the Eagle-Vail Metropolitan District or other appropriate entity in construction of the two roundabouts listed below; and shall fund to the appropriate entity fifty percent (50%) of the costs incurred by such entity in constructing a

³² 2001 1st Amendment.

roundabout at the intersection of Stone Creek Drive and Highway 6, and a roundabout at the intersection of Eagle Road and Highway 6, up to a maximum of \$250,000.00 per roundabout (collectively, the "Highway 6 Exaction").³³

(g) Subject to all required rights-of-way, easements, permits, and approvals having been obtained, and further subject to the County of Eagle and Eagle-Vail Metropolitan District having appropriated the requisite funds to finance their respective portions thereof in the manner described below, the District will contribute the lesser of (i) 40% of the design and construction costs, or (ii) \$200,000 (the "Highway 6 Trail Exaction"), toward the construction of segments 1 through 3, inclusive, of a proposed pedestrian trail system on Highway 6 anticipated to be designed over the winter of 2003 and constructed in the summer or fall of 2003. The County of Eagle will administer design and construction related activities for the improvements to be constructed in connection with the Highway 6 Trail Exaction. Funding, and the location, specifications, and other agreements with respect to the design, construction and funding of the Highway 6 pedestrian trail improvements are more fully set forth in that certain Intergovernmental Agreement for Pedestrian Trail dated as of April 22, 2003, by and between the County of Eagle, Eagle-Vail Metropolitan District, and the District.³⁴

(h) Except for the East Avon Exaction, the Chapel Place Exaction, the Swift Gulch Road Improvements, the Public Works Dedication, the East Beaver Creek Boulevard Improvements, the School Site Dedication and the Highway 6 Exaction, neither Owner, the Public Improvement Company nor the Districts shall be required to pay or provide for any exactions, dedications or the like for any development or subdivision approvals relating to the Project, except as may be otherwise specifically set forth in the PUD Guide. The expenses and fees described in subsection 4.3(e) shall be the only amount required to be paid by Owner, the Public Improvement Company and the Districts to the Town (other than the East Avon Exaction, the Chapel Place Exaction, the Swift Gulch Road Improvements, the Public Works Dedication, the East Beaver Creek Boulevard Improvements, the School Site Dedication and the Highway 6 Exaction) in connection with the Town's effectuating the Final Approval.³⁵

(h) Except for the East Avon Exaction, the Chapel Place Exaction, the Swift Gulch Road Improvements, the Public Works Dedication, the East Beaver Creek Boulevard Improvements, the School Site Dedication and the Highway 6 Trail Exaction, neither Owner, the Public Improvement Company nor the District shall be required to pay or provide for any exactions, dedications or the like for any development or subdivision approvals relating to the Project, except as may be otherwise specifically set forth in the PUD Guide. The expenses and fees described in subsection 4.3(e) shall be the only amount required to be paid by Owner, the Public Improvement Company and the District to the Town (other than the East Avon Exaction, the Chapel Place Exaction, the Swift Gulch Road Improvements, the Public Works Dedication, the East Beaver Creek Boulevard Improvements, the School Site Dedication and the Highway 6 Trail Exaction) in connection with the Town's effectuating the Final Approval.³⁶

³³ 2003 2nd Amendment.

³⁴ 2003 2nd Amendment.

³⁵ 2003 2nd Amendment.

³⁶ 2003 2nd Amendment.

(i) All future taxes, assessments and fees imposed by the Town and not addressed in this Agreement shall be imposed uniformly and non-discriminately throughout the Town.

(j) Owner shall cause the applicable District to enter into an intergovernmental agreement with the Town that shall provide that such District will be obligated to include in such District's first bond issue proceeds of no less than the amount reasonably estimated by such District to be the cost of constructing the Interstate 70 Interchange, which proceeds shall be dedicated to paying the costs of constructing such Interstate 70 Interchange. If, at the time of the District's first bond issue, it is not reasonably anticipated by the District and the Town that the Interstate 70 Interchange will be completed within three (3) years, the District may, with the approval of the Town, delay issuance of the Interstate 70 Interchange portion of such issue to avoid adversely affecting the federal income tax exemption of interest on the bonds, but only until such time as completion of the Interstate 70 Interchange is reasonably anticipated by the District and the Town to occur within three (3) years. Such intergovernmental agreement also shall provide that such bond proceeds shall be deposited into an escrow account to, among other things, ensure to the Town that, if the applicable District fails to apply such bond proceeds toward purchase of a CDOT completion bond or as other security to CDOT as contemplated in Section 4.2 above, or otherwise toward construction of the Interstate 70 Interchange, the Town will have access to such proceeds for such purposes. The Town acknowledges, however, that if the applicable District provides to CDOT the completion bond or other security acceptable to CDOT with respect to completion of the Interstate 70 Interchange as contemplated by the last sentence of Section 4.2 above, such District shall have no obligation to also provide separate security to the Town with respect to completion of the Interstate 70 Interchange.³⁷

(j) The District shall include in its first bond issue proceeds of no less than the amount reasonably estimated by the District to be the cost of constructing the Interstate 70 Interchange, which proceeds shall be dedicated to paying the costs of constructing such Interstate 70 Interchange. If, at the time of the District's first bond issue, it is not reasonably anticipated by the District and the Town that the Interstate 70 Interchange will be completed within three (3) years, the District may, with the approval of the Town, delay issuance of the Interstate 70 Interchange portion of such issue to avoid adversely affecting the federal income tax exemption of interest on the bonds, but only until such time as completion of the Interstate 70 Interchange is reasonably anticipated by the District and the Town to occur within three (3) years. Such bond proceeds shall be deposited into an escrow account to, among other things, ensure to the Town that, if the District fails to apply such bond proceeds toward purchase of a CDOT completion bond or as other security to CDOT as contemplated in Section 4.2, or otherwise towards construction of the Interstate 70 Interchange, the Town will have access to such proceeds for such purposes. The Town acknowledges, however, that if the District provides to CDOT the completion bond or other security acceptable to CDOT with respect to completion of the Interstate 70 Interchange as contemplated by the last sentence of Section 4.2, the District shall have no obligation to also provide separate security to the Town with respect to completion of the Interstate 70 Interchange.³⁸

³⁷ 2001 1st Amendment.

³⁸ 2001 1st Amendment.

4.4 Public Facilities. Owner intends to create, with respect to the Property, a public improvement company having as its members all property owners within the Project (the "Public Improvement Company") and at least two special districts (individually, a "District," and collectively, the "Districts") to facilitate financing and development of the infrastructure improvements and public facilities of the Project, including, without limitation, development of the road and utility improvements contemplated by the Development Plan. The formation documents of the Public Improvement Company shall require the Public Improvement Company to honor its obligations under this Agreement. The Districts will provide facilities and services that the Town might otherwise have to provide. The Town shall cooperate with the formation and operation of the Districts, and with the implementation of the financing, development and maintenance of the public facilities for the Project.³⁹

4.4 Public Facilities. Owner has created two public improvement companies having as members all property owners within the Project (collectively, the "Public Improvement Companies") and two special districts (collectively, the "Special Districts") to facilitate financing and development of the infrastructure improvements and public facilities of the Project, including, without limitation, development of the road and utility improvements contemplated by the Development Plan. Owner reserves the right to create such additional public improvement companies and/or special districts as may be necessary or desirable from time to time, and the Town shall reasonably cooperate with Owner with respect to the creation of such additional entities. The formation documents of the Public Improvement Companies and the Special Districts, together with contracts entered into by and between the Public Improvement Companies and the Special Districts, require the Public Improvement Companies and the Special Districts to honor their obligations under this Agreement, including the obligation of the Public Improvement Companies to remit to the Special Districts the portion of the Project Fees equal to the corresponding Town tax. Accordingly, the Public Improvement Companies have established the mechanisms for imposing and collecting within the Property the Project Fees as contemplated in Section 4.5. The District will provide public facilities and services that the Town might otherwise have to provide, and has entered into contractual arrangements with the Public Improvement Companies with respect to the performance and financing of such obligations. The Town shall cooperate with the operation of the Special Districts, and with the implementation of the financing, development and maintenance of the public facilities for the Project.⁴⁰

Pursuant to Section 4.11, the Public Improvement Companies shall keep sufficient records with respect to assessment and collection of the Project Fees, and shall require the filing of returns by the appropriate business or person with respect thereto, to ensure that there will be an adequate audit trail with respect to the matters addressed in this Section 4.4 and in Section 4.5. If the Public Improvement Companies are unable to collect any portion of the Project Fees due to delinquency, deficiency, or failure to file, the Public Improvement Companies may promptly notify the Town in writing, and the Town shall institute the procedures authorized under the Municipal Code to enforce and collect the corresponding Town tax, interest, penalties and costs. The Town shall then remit such tax revenues to the Public Improvement Companies or to the District, subject to the following conditions: (a) the Town shall retain an amount equal to its costs incurred in enforcing its collection of taxes under the Municipal Code, as well as an

³⁹ 2001 1st Amendment.

⁴⁰ 2001 1st Amendment.

administrative fee equal to [20%] of any tax and/or penalty actually collected; (b) the obligation is subject to any prior lien on such Town taxes securing the Town's sales tax revenue bonds outstanding as of the date of the Original Agreement; (c) the Town will have no responsibility to collect any increment of the Project Fees which is in excess of the corresponding Town tax or which is assessed against any transaction that is exempt from the corresponding Town tax under the Municipal Code as then in effect; and (d) the Town does not guarantee or insure that it will be able to collect any delinquent or deficient Project Fees. Under no circumstances shall the Town be subject to any legal liability to the Public Improvement Companies or to the Special Districts on account of the Town's failure to collect some or all of the delinquent or deficient Project Fees on behalf of such entities.⁴¹

The Town acknowledges that if the person or entity which failed to timely pay such Project Fee subsequently remits such Project Fee to the Public Improvement Company, such payment shall result in the application of a simultaneous credit against such person or entity's tax obligation, which credit shall fully satisfy any corresponding tax liability to the Town. The Town shall nevertheless be entitled to recover from the Public Improvement Company the administrative fee and any costs incurred in the enforcement and recovery of such Project Fees.⁴²

4.5 Retail Sales Fee, Real Estate Transfer Fee and Accommodations/Lodging Fee. Owner contemplates that the Public Improvement Company shall assess a retail sales fee on certain retail transactions occurring within the Project (the "Retail Sales Fee") and a real estate transfer fee on certain transfers of real property within the Project (the "Real Estate Transfer Fee") and may assess an accommodations/lodging fee on certain lodging accommodations transactions within the Project (the "Accommodations/Lodging Fee"). The proceeds of such Retail Sales Fee, Real Estate Transfer Fee and any Accommodations/Lodging Fee shall be pledged and remitted to one or more of the Districts to be applied toward payment of infrastructure and public facilities costs for, and ongoing operation, maintenance and administrative expenses of the Project, including, without limitation, contractual obligations of such Districts to the Town. Subject to the provisions set forth below, so long as the Public Improvement Company imposes such Retail Sales Fee, Real Estate Transfer Fee and/or Accommodations/Lodging Fee, in consideration therefor and for the application of proceeds from such Project Fees toward payment of the costs of providing and maintaining infrastructure improvements and public facilities for the Project, the Town shall waive with respect to transactions occurring within the Project imposition of all retail sales taxes, use taxes, real estate transfer taxes and accommodations/lodging taxes otherwise applicable within the Town, except any sales or accommodations tax increases duly adopted by the Town after the date of this Agreement, the proceeds of which increases are dedicated to specific projects identified in connection with such adoption.⁴³ The applicable Public Improvement Company may assess a sales and/or use fee on certain transactions occurring, and products used or consumed, within the Project, including any retail sales occurring and/or building materials used within the Project (such sales and/or use fees constituting, collectively, the "Retail Sales Fee"), and a real estate transfer fee on certain transfers of real property within the Project (the "Real Estate Transfer Fee"), and an accommodations/lodging fee on certain lodging accommodations transactions

⁴¹ 2001 1st Amendment.

⁴² 2001 1st Amendment.

⁴³ 2001 1st Amendment.

within the Project (the “Accommodations/Lodging Fee”). The portion of the proceeds of such Retail Sales Fee, Real Estate Transfer Fee and any Accommodations/Lodging Fee which is equal to the corresponding Town tax shall be pledged and remitted to one or more of the Districts, and any portion if such fees which exceeds the amount of the corresponding Town tax may be retained by the applicable Public Improvement Company, in either case to be applied toward payment of infrastructure and public facilities costs for ongoing operation, maintenance and administrative expenses of the Project, including, without limitation, contractual obligations of such Districts to the Town. Subject to the provisions set forth below, so long as the Public Improvement Company imposes such Retail Sales Fee, Real Estate Transfer Fee and/or Accommodations/Lodging Fee in consideration therefor and for the remittance and application of proceeds from such Project Fees toward payment of the costs of providing and maintaining infrastructure improvements and public facilities for the Project as provided herein, the Town shall waive with respect to transactions occurring within the Project imposition of the corresponding retail sales taxes, use taxes, real estate transfer taxes and accommodations/lodging taxes otherwise applicable within the Town, except any sales or accommodations tax increases duly adopted by the Town after the date of this Agreement, the proceeds of which increases are dedicated to specific projects identified in connection with such adoption.⁴⁴ Such waivers shall be effective for as long as the Retail Sales Fee and/or Real Estate Transfer Fee and/or Accommodations/Lodging Fee, as applicable, remains in effect for the payment of any District's obligations; provided, however, that the parties acknowledge and understand that the Town may impose any of the taxes described in the preceding sentence in connection with a dissolution of any District as contemplated in Section 4.7, at which time and to which extent the Public Improvement Company will discontinue its imposition of the correlating Project Fees. If the Public Improvement Company assesses any such Project Fees, the assessment rate shall be equal to or greater than the corresponding Town tax assessment rate from time to time in effect with respect to the corresponding Town tax. In addition, if the Public Improvement Company imposes a Real Estate Transfer Fee, such Real Estate Transfer Fee shall incorporate an exemption equivalent to the “Primary Residence Exemption” (Section 3.12.060.(0)(1) and (2) of the Municipal Code or any replacement thereof) from time to time in effect. If, after all District obligations are discharged, the Town desires to impose any of the taxes waived as set forth above but is precluded from doing so due to Article X, Section 20 of the Constitution of the State of Colorado (Taxpayer's Bill of Rights), the Public Improvement Company shall continue to impose the corresponding Project Fee and shall remit semi-annually to the Town all such fees actually collected by the Public Improvement Company, less the costs and expenses incurred by the Public Improvement Company in connection with collecting such fees. In the event the Town determines not to follow the waiver procedure set forth above, it may in lieu thereof adopt ordinances amending its municipal sales tax, real estate transfer tax and accommodations/lodging tax to provide substantially as follows: Each taxpayer liable for sales taxes, real estate transfer taxes or accommodations/lodging taxes on taxable transactions within the Property shall receive a credit against such taxes in each year equal to the total amount of Retail Sales Fees, Real Estate Transfer Fees or Accommodations/Lodging Fees, as applicable, paid by such taxpayer to the Public Improvement Company during such period. Such credit shall be automatic and shall take effect immediately, without being claimed on the taxpayer's return relating to the applicable tax and without any requirement of approval or other action by the Town, but the transactions and payments supporting the credit for any given period shall nevertheless be subject to audit to the

⁴⁴ 2001 1st Amendment.

same extent, for the same limitations periods and in the same manner as the items which are required to be reported on the taxpayer's return relating to the applicable tax.

4.6 Real Property Taxes. Owner contemplates that one or more of the Districts shall impose certain ad valorem property taxes payable with respect to real property within the Project (the "Project Ad Valorem Property Taxes"). Such Project Ad Valorem Property Taxes shall be applied toward payment of construction and maintenance costs for Project infrastructure improvements and public facilities, which may include off-site improvements.

4.7 Dissolution of Districts. Unless Owner requests the Town to do so earlier, the Town shall not initiate or pursue any proceeding to dissolve any District until after the earlier to occur of either (a) the twenty-fifth (25th) anniversary of the first issuance of bonds by either District, or (b) such time as all infrastructure improvements and public amenities contemplated in the service plans for the Districts have been constructed and no issued general obligations or revenue obligations of the Districts remain outstanding with respect thereto. Any dissolution of any District shall be conducted in accordance with the provisions and procedures set forth in Colorado Revised Statutes §§ 32-1-701, et seq. as in effect as of the date of this Agreement.

4.8 Sanitation District. Owner may, but shall not be obligated to, cause the initiation of proceedings to exclude the portion of the Property identified in the Development Plan as Lots 56 through 96 (collectively, the "Excludable Area") from the Sanitation District. The Town will not oppose such exclusion, whether initiated by Owner or any other party. Owner and the Town acknowledge that the topography of the Excludable Area, the size of the lots contained in the Excludable Area, the relative remoteness of the Excludable Area from the rest of the Project and from the facilities of the Sanitation District, together with the comparative ease of servicing the Excludable Area with individual septic tank and leach field systems, render the Excludable Area appropriate for exclusion from the Sanitation District.

4.9 Municipal Services. Notwithstanding the creation of the Public Improvement Company and the Districts, the Town shall have the responsibility and obligation to provide all municipal services to the Project, including, without limitation, police and fire protection, snow removal and road maintenance, building code enforcement, bus transportation services and other administrative services equivalent to those provided to any other area of the Town on a uniform and non-discriminatory basis, but in accordance with standards set forth in the PUD Guide, but specifically excluding, however, parks and recreation services within the Property, water supply (unless otherwise agreed between Owner and the Town) and sanitary sewer services, and snow removal and road maintenance on roads north of Interstate 70 that have not been constructed in compliance with Town specifications at the time such roads are constructed (even though the PUD Guide may permit construction of such roads to specifications other than the Town's standard specifications) (collectively the "Municipal Services"). Notwithstanding the preceding sentence or anything set forth in Section 4.10, Owner and the Town acknowledge that: (a) the Town may decline to provide fire protection services and water supply services (if the Town has been providing water supply services to the Property) if one or more special districts whose boundaries shall include the Town are formed to provide such services; and (b) to the extent the Town does not provide services as contemplated in clause (a) above, no payment shall be due to the Town with respect to such services.

4.10 Payment for Town Services.

(a) On or before September 15 of each calendar year after the calendar year in which Final Approval occurs, the Town shall, deliver to the appropriate District or Districts its invoice (individually, a “Municipal Services Invoice”) for providing the Municipal Services to the Project for the following calendar year, based on the following:

(i) with respect to snow removal and roadway maintenance expenses, the applicable Municipal Services Invoice shall set forth the Town's calculation of the “average cost per lane mile” calculated from the “average cost per road mile” incurred by the Town during the preceding year as reported in the Town's most recently filed 754 CDOT report entitled “Statement of Receipts and Expenditures for Roadway System” required to be filed with CDOT on or before May 1 of each year with respect to such preceding calendar year (excluding, however, all capital costs and expenses and all administrative costs and expenses other than (A) capital costs actually incurred for asphalt overlays on roadways within the Property, and (B) direct administrative costs and expenses of the Town's public works department), multiplied by the number of lane miles of public roads maintained by the Town within the Property during such preceding year;

(ii) with respect to bus and shuttle transportation services supplied by the Town to and within the Project at the request of a District, the applicable Municipal Services Invoice shall set forth the appropriate charge at an hourly rate calculated on the basis of the Town's budgeted cost of labor service hours for the Town's bus system multiplied by the labor service hours required for the operation of the Town's transportation services within the Project. The calculation of the cost of labor service hours shall include only the following items:

(A) the fixed costs for operation of the Town's transportation system, as estimated and set forth in the Town's transportation system budget for the ensuing calendar year;

(B) variable or seasonal costs identified as those costs that arise and vary depending on the extent of the operation of the Town's transportation system and that are not otherwise included as fixed expense, as estimated and set forth in the Town's transportation system budget for the ensuing calendar year; and

(C) non-recurring costs associated with the District's rolling stock, such as outside repair of vehicles, motor replacement, refurbishing and painting of vehicles, which costs shall not be incurred without the consent of the Districts.

The calculation of the cost of labor service hours shall not include the Town's capital costs or the costs of rolling stock, which rolling stock, or cash in lieu thereof, shall be provided by the Districts in numbers and design (or amounts, as applicable) mutually and reasonably agreed upon by the parties sufficient to provide the service requested by the applicable District.

(iii) with respect to fire protection services supplied by the Town to the Project, the applicable Municipal Services Invoice shall set forth the Town's calculation of the annual required payment to the Town, which shall be the product of a fraction, the numerator of which shall equal the total assessed valuation of the Property, as certified by the Eagle County Board of County Commissioners for the preceding calendar year, and the denominator of which shall equal the total assessed valuation of all real property, wherever situated, to which the Town provides fire protection services, as certified by the Eagle County Board of County Commissioners for the preceding calendar year, multiplied by the dollar amount of the entire cost of regional fire protection services to be provided by the Town, as set forth in the Town's approved budget for the ensuing calendar year;⁴⁵

(iii) The Property is included within the boundaries of, and is subject to property tax assessment for, the Eagle River Fire Protection District. Accordingly, the Town shall not include within any Municipal Services Invoice, and neither Owner nor the District shall have any obligation to the Town for, any assessment of cost for regional fire protection services.⁴⁶

(iv) with respect to police services, the applicable Municipal Services Invoice shall set forth the Town's calculation of 7.6 mills multiplied by the total assessed valuation of the Property, as certified by the Eagle County Board of County Commissioners for such preceding year;⁴⁷

(iv) With respect to the Town's annual cost of providing police services to the Project for the period commencing July 1, 2004, and continuing through the term of this Agreement, the applicable Municipal Services Invoice shall set forth the Town's calculation pursuant to the Police Services Methodology. The percentage of time allocated to the patrol factor calculation (35%) and the percentage of time allocated to the service call factor calculation (65%) shall remain constant from year to year. However, in connection with preparing the Municipal Services Invoice for each upcoming year, the Town shall update the following components of the Police Services Methodology annually: (A) the total direct costs for the patrol factor calculation; (B) the ratio of Project lane miles to total lane miles within the Town's municipal boundaries (expressed as a percentage); (C) the total direct costs for the service call factor calculation; (D) the ratio of service calls within the Project to total service calls within the Town's municipal boundaries (expressed as a percentage); (E) the total indirect costs for the preparedness, administration and support factor calculation; and (F) the ratio of residential dwelling units and commercial square footage within the Project to total residential dwelling units and commercial square footage within the Town's municipal boundaries (expressed as a percentage representing the average between the residential dwelling unit ratio and the commercial square footage ratio). The annual update described above shall be subject to reconciliation and audit pursuant to the procedures described in Sections 4.10(e) and

⁴⁵ 2001 1st Amendment.

⁴⁶ 2001 1st Amendment.

⁴⁷ 2004 3rd Amendment.

4.10(f).⁴⁸

(v) the applicable Municipal Services Invoice also shall set forth the total amounts due to the Town pursuant to clauses (i) through (iv) above and multiply the sum of such amounts by seven and one-half percent (7.5%) (the "Municipal Services Surcharge") which shall constitute the total amount due to the Town from the Property with respect to all Municipal Services supplied to the Property other than those enumerated in clauses (i) through (iv) above;

(vi) with respect to capital expenses for the Town's purchases of rolling stock, the applicable Municipal Services Invoice shall set forth the annual required payments to the Town, if any, calculated as follows:

(A) for rolling stock for snow removal and roadway maintenance purposes, the annual required payment, if any, shall be the product of a fraction, the numerator of which shall equal the number of lane miles of public roads maintained by the Town within the Property during the preceding calendar year (as contemplated in clause (i) above), and the denominator of which shall equal the total number of lane miles of all public roads maintained by the Town, wherever situated, during such preceding calendar year, multiplied by the dollar amount required to purchase such rolling stock set forth in the Town's approved budget for the ensuing calendar year; and

(B) for rolling stock for fire protection services, the annual required payment, if any, shall be the product of a fraction, the numerator of which shall equal the total assessed valuation of the Property, as certified by the Eagle County Board of County Commissioners for the preceding calendar year, and the denominator of which shall equal the total assessed valuation of all real property, wherever situated, to which the Town provides fire protection services, as certified by the Eagle County Board of County Commissioners for the preceding calendar year, multiplied by the dollar amount required to purchase such rolling stock set forth in the Town's approved budget for the ensuing calendar year;⁴⁹

(vii) the sum of all charges described in clauses (i) through (vi) above with respect to a particular Municipal Services Invoice shall constitute the total amount due to the Town from the Project and the Property with respect to the Town's provision of the Municipal Services for the applicable year (each, a "Required Municipal Services Payment"); provided, however, that Owner or the applicable District shall make a one-time capital contribution to the Town in the amount of \$250,000.00, to be used exclusively for fire protection capital expenses, which contribution shall be payable in seven (7) equal annual installments of \$35,714.29 each, commencing on the date that is thirty (30) days after Owner and the Districts shall have received written notice from the Town that the Town's Fire Department intends to commence or has commenced full-time staffing of either the Eagle Vail Fire Station or a fire station located within the Property,

⁴⁸ 2004 3rd Amendment.

⁴⁹ 2001 1st Amendment.

or, if later, the date such full-time staffing actually occurs, and continuing on each anniversary of such date until fully paid.⁵⁰

(vii) the sum of all charges described in clauses (i) through (vi) above with respect to a particular Municipal Services Invoice shall constitute the total amount due to the Town from the Project and the Property with respect to the Town's provision of the Municipal Services for the applicable year (each, a "Required Municipal Services Payment").⁵¹

(b) The Town shall apply, toward payment of the applicable Required Municipal Services Payment, all Town Ad Valorem Property Tax Revenue scheduled to be received by the Town during such calendar year (in payment of Town Ad Valorem Property Taxes assessed with respect to the immediately preceding calendar year). The applicable Municipal Services Invoice shall set forth the projected Town Ad Valorem Property Tax Revenue for the subject calendar year and the difference, if any, between the amount of the Required Municipal Services Payment and the projected Town Ad Valorem Property Tax Revenue for such calendar year.

(c) To the extent the applicable Town Ad Valorem Property Tax Revenue will not be sufficient to pay the full amount of the applicable Required Municipal Services Payment, the applicable District or Districts shall pay the difference in twelve (12) equal monthly installments commencing on January 1 of the applicable year. Such payment shall be subject and subordinate to Districts' obligations to make debt service payments. To the extent the applicable Town Ad Valorem Property Tax Revenue exceeds the full amount of the applicable Required Municipal Services Payment, the excess shall be retained by the Town to be used in its sole discretion. During the first five calendar years after the date of Final Approval, (i) the applicable District or Districts shall annually maintain reserves equal to the estimated shortfall, if any, for the following year between the next upcoming Required Municipal Services Payment and the applicable Town Ad Valorem Property Tax Revenue as projected in good faith by such District or Districts, and (ii) Owner and the Public Improvement Company shall guarantee collection by the Town of any such shortfall.

(d) If the applicable District or Districts default in their obligation to make any payment required under subsection (c) above, and such default continues for thirty (30) days after such District or Districts and Owner shall have received from the Town written notice of such default, the Town may, at its sole election, discontinue providing Municipal Services to the Project and Property to the extent of expenses that would be incurred for providing Municipal Services up to the amount in default.

(e) Upon completion of each calendar year, the Town shall cause its accountants to determine the actual amount of all fees and expenses that the Municipal Services Invoice relating to such calendar year should have reflected, and reconcile such amounts against all amounts billed to and received from the Districts and all Town Ad Valorem Property Taxes received by the Town for the relevant period and deliver to the Districts certification of such

⁵⁰ 2001 1st Amendment.

⁵¹ 2001 1st Amendment.

actual amounts on or before March 1 of the ensuing calendar year. If the Districts have paid less than the actual amounts due from the Districts, the Districts shall pay the balance owing within sixty (60) days after receiving the Town's certified statement. If the Districts have paid to the Town more than the actual amounts due from the Districts, the Town will, at its option, either refund such excess or credit such excess against the next installment or installments payable by the Districts to the Town with respect to any Municipal Services Invoice. The Town shall adjust pro rata actual amounts due with respect to any Municipal Services Invoice for any fractional year occurring during the term of this Agreement or during which the Districts shall be in existence and functioning based on the number of days during such calendar year as compared to 365 days and the Town will accordingly adjust all sums payable by or credits due to the Districts pursuant to this subsection (e).

(f) Upon reasonable notice to the Town, the applicable District or Districts, or their authorized representatives, will have the right to inspect the books and records of the Town pertaining to projected or actual Municipal Services Invoice calculations. In addition, the Districts) may, upon reasonable prior notice to the Town given within one year after the delivery by the Town of any Municipal Services Invoice, have audited any or all of the Town's books and records relating to the calculation of charges for the calendar year covered by such Municipal Services Invoice. If such audit is performed by an independent certified public accountant who is not regularly engaged by either the Districts) or the Town and is reasonably approved by both parties, and if such audit determines that such Municipal Services Invoice overstated the District(s) obligation by more than four percent (4%) of the total thereof as determined by such audit, the Town will reimburse or credit the District(s) for the reasonable costs incurred by the District(s) for such audit within thirty (30) days after receipt of a copy of the audit report. In addition, if the audit reveals any overpayment or underpayment by the District(s) for the year audited, within thirty (30) days after the audit report is delivered to the Town and the District(s), the Town will correct its statement for such year and credit the District(s) with the amount of any overpayment and the District(s) will pay to the Town the amount of any underpayment.

(g) The Town's obligations under Sections 4.9 and 4.10 and the Districts' obligations under Sections 4.10 and 4.14 shall terminate upon the dissolution of the Districts as contemplated in Section 4.7.

4.11 Books and Records: The Town, the Public Improvement Company and each District shall maintain adequate books and records to accurately perform and account for its respective obligations under this Agreement. Each such party shall, upon request of any other such party, permit representatives of such requesting entity reasonable access during normal business hours to such books and records in order to permit such requesting entity to determine compliance with the terms of this Agreement or the accuracy of any information contained in any statement, notice, invoice or report required to be provided under this Agreement. All such parties shall use their best efforts to resolve any issues, discrepancies, or inaccuracies discovered in any such statement, notice, invoice or report or in such requesting entity's review of the applicable books and records.

4.12 Water Service. If the Town provides water service to the Project, the Town shall charge water tap fees and usage charges to users within the Property on a uniform, non-

discriminatory basis with other users within the Town. The Town shall remit monthly to the Districts all water tap fees collected by the Town with respect to providing water service to any user of the Property. The Town may direct that all such water tap fees be paid directly to the Districts.

4.13 Design Review. The Public Improvement Company shall establish a design review board to review for conformity with the PUD Guide and applicable covenants, conditions and restrictions development proposals for the Property or any portion of the Property (the "Design Review Board").⁵²

(a) The Design Review Board shall consist of not more than five (5) members, one (1) of whom shall be a member of the Town's Planning and Zoning Commission designated by the Town from time to time, and the remainder of whom shall be appointed as provided in the governing documents of the Public Improvement Company.⁵³

4.13 Design Review. Owner shall establish a design review board to review for conformity with the PUD Guide and applicable covenants, conditions and restrictions development proposals for the Property or any portion of the Property (the "Design Review Board").⁵⁴

(a) The Design Review Board shall consist of not more than five (5) members, one (1) of whom shall be a member of the Town's Planning and Zoning Commission designated by the Town from time to time and the remainder of whom shall be appointed as provided in the governing documents of the Design Review Board.⁵⁵

(b) The Design Review Board shall refer to the Town's Planning and Zoning Commission, for comment only and not for approval or disapproval, all development proposals submitted to the Design Review Board for portions of the Property south of Interstate 70 and all portions of the Property north of Interstate 70 other than Planning Area RMF-3 and the lots designated Lots 1 through 96 in the Sketch/PUD Development Plan. The Design Review Board shall have no obligation to refer to the Town's Planning and Zoning Commission any development proposal concerning such Planning Area or lots. At Owner's or the Public Improvement Company's option, a separate design review board may be established with respect to such Planning Area and lots. Such design review board shall not be required to include any Town official as a member.

4.14 Indemnity for Lost Sales Tax Revenues.

(a) If either Wal-Mart or City Market relocates its current store from its current location in the Town to a site within the Property, and due to such fact, the Town collects less net sales tax revenue during a given twelve (12) month period commencing on the applicable opening date described below, or during any succeeding twelve month period

⁵² 2001 1st Amendment.

⁵³ 2001 1st Amendment.

⁵⁴ 2001 1st Amendment.

⁵⁵ 2001 1st Amendment.

commencing on any anniversary of such opening date, from such vacated Wal-Mart or City Market site, as the case may be, than the Town collected during the twelve (12) month period immediately preceding the date that Wal-Mart or City Market, as the case may be, opened for business at its new site within the Property (the amount so collected by the Town during such twelve (12) month period from such current Wal-Mart store or City Market store, as the case may be, subject to adjustment as provided below, is referred to, respectively, as a "Base Amount"), after receipt of written certification from the Town of the Town's good faith estimate of the amount of such sales tax revenue shortfall anticipated by the Town for the succeeding twelve (12) month period, the applicable District shall remit to the Town the amount of such shortfall as provided below. In determining the amount of any such estimated shortfall, the Town shall offset the amount of all sales tax revenue reasonably and in good faith anticipated to be collected from the applicable vacated site against the applicable Base Amount.

(b) The applicable Base Amount shall be adjusted on an annual basis for inflation as measured by the annual change, if any, in the Consumer Price Index, Series ID: CUUSA433SAO (All Urban Consumers; Not Seasonally Adjusted; Denver-Boulder-Greeley, CO; All Items; Base Period 1982-84 = 100; 1st half of 1998 = 160.5).

(c) In no event will the Town ever be responsible for paying to the applicable District any sales tax revenues generated by the vacated Wal-Mart or City Market site, as the case may be, that exceeds the applicable Base Amount.

(d) The applicable District shall pay to the Town the applicable annual shortfall based on the Town's certification described in subsection (a) above in twelve (12) equal monthly installments, on or before the twentieth (20th) day of each calendar month, commencing with the calendar month after the applicable District receives such Town certification. Within sixty (60) days after the end of each such twelve (12) month period, the Town shall deliver to the applicable District an accounting with respect to sales tax revenues collected from the applicable vacated site(s) and payments made by the applicable District as provided above. If the applicable District has paid to the Town more than the actual amount due, the Town shall reimburse or credit the applicable District against the next payments, if any, due from the applicable District. If the applicable District has paid to the Town less than the actual amount due from such District, such District shall pay the balance owing within sixty (60) days after receipt of such accounting from the Town.

(e) With respect to the foregoing, the applicable District shall have the right to review and have audited the Town's records pertaining to collections of sales tax revenues and calculation of the applicable Base Amount, substantially in accordance with the terms, conditions and procedures described in Section 4.10(f) above.

(f) If the District becomes liable for payment to the Town of the applicable annual shortfall as described above because either Wal-Mart or City Market, or both, have vacated their respective present sites within the Town and relocated to a site within the Property, and if either Wal-Mart or City Market, or both, subsequently cease for any reason to operate in a site within the Property, then the applicable District shall thereupon be relieved from any farther obligation or liability to the Town with respect to any further payment of the applicable annual

shortfall even though such vacated space within the Property may later be occupied by a business that is substantially similar to Wal-Mart or City Market, as the case may be, but is unrelated to such entity; provided, however, that regardless of any change in ownership or change in the trade name used for the business, neither Wal-Mart nor City Market will be considered to have ceased to operate within the Property for so long as the business operation continues in a substantially similar form to that operated by Wal-Mart or City Market, as applicable, if such operation is conducted under the same or another name by an affiliate, parent or subsidiary of Wal-Mart and/or City Market, respectively.⁵⁶

4.15 TABOR Election Requirement. Owner agrees that, to the extent additional voter authorization becomes necessary for the Districts' performance of their obligations to the Town, Owner will cause any required elections to be called and held at the next available election date.

ARTICLE 5

Default; Remedies; Termination

5.1 Default by Town. A "breach" or "default" by the Town under this Agreement shall be defined as: (a) any zoning, land use or other action or inaction, direct, indirect or pursuant to an initiated measure, taken without Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights of Owner under this Agreement or the Development Plan; or (b) the Town's failure to fulfill or perform any material obligation of the Town contained in this Agreement.

5.2 Default by Owner. A "breach" or "default" by Owner shall be defined as Owner's failure to fulfill or perform any material obligation of Owner contained in this Agreement.

5.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section 6.8, and the defaulting party shall have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

5.4 Remedies.

(a) If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action for any equitable remedy, including injunction and/or specific performance, and/or an action to recover damages. Each remedy provided for in this Agreement is cumulative and is

⁵⁶ 2001 1st Amendment.

in addition to every other remedy provided for in this Agreement or otherwise existing at law, in equity or by statute.

(b) The Town acknowledges that since this Agreement and the Development Plan constitute a development agreement which confers rights beyond those provided by the three (3) year statutory vesting approach described in the Vested Property Rights Statute, in the event of a breach or default by the Town, in addition to any of the foregoing remedies, Owner shall be entitled to:

(i) recover from the Town any damages that would have been specifically available to Owner as contemplated in Colorado Revised Statutes Section 24-68-105(1)(c) as in effect on the Effective Date, plus any other and additional damages provable at law; and

(ii) cause the Property, or any portion thereof designated by Owner, to be disconnected from the Town.

ARTICLE 6

Miscellaneous

6.1 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

6.2 **No Joint Venture or Partnership.** No form of joint venture or partnership exists between the Town and Owner, and nothing contained in this Agreement shall be construed as making Town and Owner joint venturers or partners.

6.3 **Expenses.** Except as otherwise provided in this Agreement, Owner and the Town shall each bear their respective costs and expenses associated with entering into, implementing and enforcing the terms of this Agreement.

6.4 **Waiver.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

6.5 **Town Findings.** Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the Town.

6.6 **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

6.7 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

6.8 Notices. Any notice or communication required under this Agreement between the Town and Owner must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section, designate additional persons to whom notices or communications shall be given, and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to Town:

Town of Avon
P.O. Box 975
400 Benchmark Road
Avon, Colorado 81620
Attention: Town Manager

With a copy to:

Town of Avon
P.O. Box 975
400 Benchmark Road
Avon, Colorado 81620
Attn: Town Attorney⁵⁷

With a copy to:

Town of Avon
c/o Dunn Abplanalp & Christensen, P.C.
108 S. Frontage Road W., #300
Avon, Colorado 81657-5087
Attention: Town Attorney⁵⁸

If to Owner, by mail delivery:

⁵⁷ 2004 2nd Amendment.

⁵⁸ 2001 1st Amendment.

c/o Otto, Porterfield & Post LLC
P.O. Box 3149
Vail, Colorado 81658
Attention: William J. Post, Esq.⁵⁹

Traer Creek LLC
EMD Limited Liability Company
P.O. Box 640
Vail, Colorado 81658
Attn: William J. Post, Esq.⁶⁰ Magnus Lindholm⁶¹

Or, for delivery other than by mail,

c/o Otto, Porterfield & Post LLC
0051 Eagle Road
Eagle-Vail, Colorado 81620
Attention: William J. Post, Esq.⁶²

Traer Creek LLC
EMD Limited Liability Company
0322 East Beaver Creek Blvd.
Avon, Colorado 81620
Attn: William J. Post, Esq.⁶³ Magnus Lindholm⁶⁴

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, Colorado 80202
Attention: Thomas J. Ragonetti, Esq. and Munsey L. Ayers, Esq.⁶⁵

If to the District:

Traer Creek Metropolitan District
c/o McGeady Sisneros, P.C.
1675 Broadway, Suite 2100
Denver, Colorado 80202
Attn: Darlene Sisneros, Esq.⁶⁶

⁵⁹ 2001 1st Amendment.

⁶⁰ 2001 1st Amendment.

⁶¹ 2004 3rd Amendment.

⁶² 2001 1st Amendment.

⁶³ 2001 1st Amendment.

⁶⁴ 2004 3rd Amendment.

⁶⁵ 2001 1st Amendment and 2004 3rd Amendment.

⁶⁶ 2001 1st Amendment.

6.9 Assignment. This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto. Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Owner assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Owner's obligations under this Agreement by its assignee or transferee shall thereby relieve Owner of any further obligations under this Agreement with respect to the matter so assumed.

6.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Owner and the Town have executed this Agreement as of the date first written above.